Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

SAM F. COLE, JR., SUBSTITUTE TRUSTEE, ESTATE OF PRUDENCE REYNOLDS, AND GERALD W. PICKENS, ADMINISTRATOR,

Petitioners,

vs.

JUANITA MITCHELL, PERSONAL REPRESENTATIVE OF THE ESTATE OF BILLY GWIN MITCHELL,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Tennessee

PETITION FOR WRIT OF CERTIORARI

SAM F. COLE, JR.
Counsel of Record
100 N. Main Bldg., Suite 2519
Memphis, Tennessee 38103
(901) 525-7648
Attorney for Petitioners

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of Tennessee failed or refused to give full preclusive effect and full faith and credit to the proceedings of the Chapter 11 bankruptcy case of Billy Gwin Mitchell.

2. Whether the Supreme Court of Tennessee directed prohibited modification of the Amended Confirmed Chapter 11 Plan and Order of Confirmation of Billy Gwin Mitchell's Chapter 11 proceedings.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Sam F. Cole, Jr., Substitute Trustee, Estate of Prudence Reynolds, and Gerald W. Pickens, Administrator, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Tennessee dated April 6, 1998 and that Court's Order of June 1 1998 denying the Petitioners' Petition to Rehear.

OPINIONS BELOW

On June 1, 1998 the Supreme Court of Tennessee entered a Per Curiam Order (App. B) which denied the Petitioners' Petition To Rehear with respect to the Opinion of the Tennessee Supreme Court (App. A) entered on April 6, 1998. The Opinion of the Court of Appeals of Tennessee dated August 8, 1996 is reproduced in the Appendix (App. C) to this Petition.

JURISDICTION

The Judgment and Opinion sought to be reviewed was entered on April 6, 1998. The case is reported at 966 S.W.2d 411 (Tenn. 1998). This Petition is filed subsequent to an Order of The Supreme Court of Tennessee entered June 1, 1998 that denied the Petitioners' Petition to Rehear (App. B). In accordance with Rule 13 (3) of this Court this Petition is being filed and submitted within 90 days from the June 1, 1998 Order of the Tennessee Supreme Court that denied the Petitioners' Petition for rehearing. The jurisdiction of this Court is invoked under

the provisions of U.S. Constitution, Article III, Sections 1 and 2, U.S. Constitution, Article IV, Section 1; U.S. Constitution, Article VI, pursuant to Rule 10 (b) and (c) of this Court, and under Title 28, U.S.C. Section 1257, Title 28, U.S.C. Section 1738.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Article III

SECTION 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good behavior, and shall, at stated Times, receive for their services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their authority; . . .

U.S. Constitution, Article IV, Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof

U.S. Constitution, Article VI

All debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution and the laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges of every State shall be bound thereby, any Thing in the Constitution or laws of any State to the contrary notwithstanding.

Title 28, United States Code, Section 1738

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in the other courts within the United States and its Territories and Possessions by the attestation of the clerk and the seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Title 28 United States Code, Section 1257 (a)

Final Judgments or decrees rendered by the highest court of a State in which decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a Statute of any State is drawn into question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, or privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

STATEMENT OF THE CASE

This case began on August 24, 1989 with the filing of a Complaint by Billy Gwin Mitchell in the Chancery Court of Tennessee For The Thirtieth Judicial District at Memphis. The original Complaint sought injunctive relief to prevent the foreclosure of a Deed of Trust securing an indebtedness on a 141.73 acre farm property owned by Mitchell. The Original Complaint challenged that the Estate of Prudence Reynolds was the lawful owner of the underlying farm mortgage debt which the Trust Deed secured. As alternative relief, Mitchell prayed that the correct mortgage balance be determined in the Chancery Court action. The Defendant-Petitioners filed an Answer and Counter-Complaint alleging that Mitchell's prior Chapter 11 proceedings had determined the amount owing on the mortgage indebtedness, and that Mitchell

had been directed by the bankruptcy court as to the terms and provisions under which he would satisfy and pay the remaining mortgage indebtedness to Prudence Reynolds. As a part of the relief sought by them, Petitioners sought recognition in the Chancery Court that they were entitled to a judgment in the principal amount of $102,902.28, which is the amount that the Chapter 11 bankruptcy proceedings revealed that Mitchell owed to Prudence Reynolds. Mitchell sought to have alleged "payments" in "goods and services" to Prudence Reynolds by a partnership of Mitchell and his two sisters to be credited as "payments" on the mortgage indebtedness. Beginning at the Chancery Court trial level and on into the Tennessee Court of Appeals, and Tennessee Supreme Court, the Petitioners raised the federal questions sought to be reviewed here in this Court. Petitioners repeatedly objected in the trial to the admission of parole evidence on behalf of Mitchell which sought to vary, modify or alter the terms and provisions of Mitchell's Confirmed Chapter 11 Plan and Order of Confirmation. Petitioners also objected to the trial court's commission of error in erroneously instructing the jury under federal law on the effects of Mitchell's Chapter 11 bankruptcy court proceedings. As a result of these trial errors on the part of the Special Chancellor, a judgment was rendered for only $41,101.64 as the principal amount owing on the mortgage debt. Petitioners appealed to the Court of Appeals of Tennessee For The Western Section at Jackson on October 11, 1994. That Court rendered its Opinion on August 8, 1996 reversing and remanding the case for a new trial because of the erroneous instructional and evidentiary rulings made at trial by the Special Chancellor. The last page of

the Opinion of the Tennessee Court of Appeals contains a typographical error in referring to "the bankruptcy court's final order of November, 1988," . . . The final decree (App. E) of the bankruptcy court was actually entered on January 13, 1989, while the Final Report (App. F) of Billy Gwin Mitchell in the Chapter 11 proceedings was filed in November, 1988. It is that Final Report to which the Tennessee Court of Appeals was obviously referring in its August 8, 1996 Opinion. The Tennessee Court of Appeals otherwise recognized and opined that "In light of the legal effect of res judicata of the bankruptcy court's orders and judgments, the evidence which plaintiff (Mitchell) sought to introduce concerning the value of goods and services provided by the BAM partnership was irrelevant, immaterial, and inadmissible." The Tennessee Court of Appeals thus gave preclusive effect to all of the Chapter 11 proceedings from Billy Gwin Mitchell's bankruptcy case.

The Supreme Court of Tennessee thereafter granted Mitchell's Application For Permission To Appeal the Judgment and Opinion of The Court of Appeals of Tennessee. While initially recognizing the preclusive effects of the bankruptcy court's order of confirmation, the Supreme Court of Tennessee further opined that the Final Report of Debtor-In-Possession, Billy Gwin Mitchell, had no preclusive effects, and directed that the trial court could even consider and further rule upon alleged "payment" in the form of "goods" and "services" being credited on the mortgage balance owing. Although Mitchell had made cash payments of $27,353.25 on the mortgage balance from the date of the Order of Confirmation and

until the death in 1988 of Prudence Reynolds, these payments did not even pay the interest on the mortgage balance of $102,902.28 for that period from 1984 to 1988. If only interest on that amount had been paid by Mitchell, such interest at the mortgage rate of 7% would have exceeded $30,000.00 for that four year period. Mitchell recognized that as being so in his Final Report to the bankruptcy court in reporting that no payments had been made for that period to either secured or unsecured creditors. Mitchell, in fact, reported to the bankruptcy court that he had only been able to pay taxes, court costs and administrative expenses though November 10, 1988. Mitchell's sworn Report and Accounting thus revealed that he had not been able to reduce the principal amount owing of $102,902.28 on the mortgage debt since the June 13, 1984 Order of Confirmation by the bankruptcy court.

REASONS FOR GRANTING THE WRIT

THE TENNESSEE SUPREME COURT DID NOT GIVE FULL PRECLUSIVE EFFECT AND FULL FAITH AND CREDIT TO THE BANKRUPTCY COURT CHAPTER 11 BANKRUPTCY PROCEEDINGS OF BILLY GWIN MITCHELL IN HOLDING THAT HIS FINAL REPORT AS DEBTOR-IN-POSSESSION HAD NO RES JUDICATA EFFECTS BECAUSE IT WAS NOT AN ORDER OF THE BANKRUPTCY COURT.

In *Baker by Thomas v. General Motors Corp.*, 522 U.S. ___, 118 S.Ct. 657, 664-665, 139 L.Ed.2d 580 (1998) this Court adopted, as a portion of its Opinion, Mr. Justice Jackson's concurring Opinion from *Barber v. Barber*, 323 U.S. 77, 86, 65 S.Ct. 137, 141, 89 L.Ed. 82 (1944), that

"neither the full faith and credit clause of the Constitution nor the Act of Congress implementing it says anything about final judgments. Both require that full faith and credit be given to 'judicial proceedings' without limitation as to finality. Upon recognition of that broad meaning of that term much may someday depend."

The Tennessee Supreme Court was thus in error in holding that: "The Report cannot be res judicata because it is not an order of the court." The Tennessee Supreme Court failed to recognize that Mitchell's Final Report does have res judicata effects as a part of the record and proceedings in Mitchell's Chapter 11 case. In issue preclusion, or estoppel by record, it is the record of the former case rather than the judgment that stands as a barrier to relitigation; *Clark v. Clark,* 80 Nev. 52, 389 P.2d 69, 71 (1964); *Sierra Pacific Power Co. v. Craigie,* 738 F.Supp. 1325, 1327 (D.C.Nev. 1990). Mitchell could not assert that he made a "mistake" as to the pre-confirmation principal amount owing on the mortgage any more than he could seek to refute his sworn statements of his Final Report on what he had paid by November, 1988. Litigants are estopped by the record of the proceedings, unless they were the victims of fraud and mistake; *American Dirigold Corp. v. Dirigold Metals Corp.,* 125 F.2d 446, 455 (6th Cir. 1942); *Putnam v. Day,* 89 U.S. 60, 22 L.Ed. 764 (1875).

In a bankruptcy case, "proceedings" are generally described as those matters of an administrative character, including questions between the bankrupt and his creditors which are presented in the ordinary course of the administration of the bankrupt's estate; *Matter of Lewis Lumber Co.,* 635 F.2d 542, 544 (6th Cir. 1980). A Kentucky bankruptcy court held that everything that occurs in a

bankruptcy case is a "proceeding"; *In Re Leach,* 35 B.R. 100, 101 (Ky. 1983). The Court of Appeals For The First Circuit opined that an attempt to cancel a bond is a "proceeding;" *In Re Advent Corp.,* 24 B.R. 612 (BAP 1st Cir. 1982). Billy Gwin Mitchell's submission and filing of his Final Report and Accounting to the bankruptcy court and for the benefit of his creditors is likewise a proceeding to which full faith and credit must be given.

As construed by this Court in *Stoll v. Gottlieb,* 305 U.S. 165, 170-171, 59 S.Ct. 134, 136-137, 83 L. Ed. 104 (1738) the effect of judicial proceedings is prescribed by the implementing statute, Title 28, United States Code, Section 1738. A statute is likewise a public act to which full faith and credit must be given; *Bradford Electric Light Co. v. Clapper,* 286 U.S. 145, 154, 52 S.Ct. 571, 573, 76 L.Ed. 1026, 1032 (1932); *Carroll v. Lanza,* 349 U.S. 408, 75 S.Ct. 804 (1955). The Tennessee Supreme Court also did not give full faith and credit to this implementing statute in examining the complete effects of Mitchell's Chapter 11 proceedings.

This Court's Opinion in *Baker by Thomas,* (supra) is consistent in following long historical direction that commands that *proceedings* of federal courts must be accorded the same faith and credit by state courts as would be required in respect to judicial proceedings of another State; *Supreme Lodge, Knights of Pythias v. Meyer,* 265 U.S. 30, 44 S.Ct. 432, 68 L.Ed. 885 (1924). In *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430, 443, 64 S.Ct. 208, 215-16, 88 L.Ed. 149 (1943) the Court held that judicial proceedings and records are both required to "have such faith and credit given to them in every court within the United States". The record and statements in Mitchell's sworn

Final Report as Debtor-In-Possession should have been accorded preclusive effect by the Tennessee Supreme Court "as a barrier to relitigation" as to all matters contained in that Report. Although Chief Justice Stone was writing in a state-to-state context, the principle is as powerful in state-federal relations; *Del Valley Citizens Council v. Com. of Pa.*, 755 F.2d 38, 44 (3rd Cir. 1985), *cert. denied*, 474 U.S. 819, 106 S.Ct. 67 (1985).

Mitchell is also precluded by judicial estoppel from repudiating such sworn statements to his advantage in subsequent litigation; *Holt v. Southern Ry. Co.*, 51 F.R.D. 296 (D.C Tenn. 1969). An account stated is an agreement, express or implied, that an examination of the account between the parties has occurred, and a statement of that account has been asserted and accepted as correct; *Polygram S.A. v. 32-03 Enterprises, Inc.*, 697 F. Supp. 132, 136 (E.D.N.Y. 1988). Moreover, Mitchell was serving in a fiduciary capacity as Debtor-In-Possession of his Chapter 11 case. *In Re Microwave Products of America, Inc.*, 102 B.R. 666, 671 (W.D. Tenn. 1989). His accounting and report would thus be even more binding under principles of judicial estoppel applicable to a trustee. Public policy upholds the sanctity of the oath; *In Re Phillips*, 124 B.R. 712, 720 (Tex. 1991); *Konstantitinidis v. Chen*, 626 F.2d 933, 937 (D.C.Cir. 1980). Equity tolerates in bankruptcy trustees no interest adverse to the trust; *Mosser v. Darrow*, 341 U.S. 267, 271, 71 S.Ct. 680, 682, 95 L.Ed.2d 927 (1951). Any claim, or doubt, that his Final Report and Accounting was not correct would be resolved against him as trustee; *White Mountain Apache Tribe of Arizona v. U.S.*, 26 Cl. Ct. 446, 449 (1992).

With the entry of the Final Decree closing Mitchell's Chapter 11 proceedings the bankruptcy court's order stated that the case had been fully administered, thereby placing that court's stamp of approval upon what Mitchell had stated and done as Debtor-In-Possession. The Tennessee Supreme Court placed inordinate and excessive emphasis on the perfunctory manner in which a final decree is entered in a Chapter 11 case. As such, that Court completely treated the Final Decree of January 13, 1989 as a non-entity. A court having jurisdiction to settle a trustee's accounts renders res judicata matters which were open to dispute, whether or not actually disputed; *Restatement of Trusts*, 2nd, Section 220 (1959). The requirement that federal court judgments command at least the central core of res judicata effects in state courts is indispensable to federalism. . . . More important, the notion of judicial power itself embraces the authority to enter judgments that command the broader res judicata effects that were familiar at the time of the Constitution. Through the Supremacy Clause, Article III provides a sufficient text for binding state courts; *Wright, Miller & Cooper, Fed. Practice & Procedure*, Section 4468, Vol. 18, p. 649, Res judicata in Federal System (1981).

Mitchell would thus be prohibited from relitigating anything about the correctness of his Final Report in subsequent litigation in State Court. This is so because any claim by Mitchell over the correctness of his accounting and report should have been raised by him in the Chapter 11 proceedings. Application of federal law reflects that such claim cannot now be raised, or considered, in the state courts of Tennessee; *Sanders Confectionery Products, Inc. v. Heller Financial, Inc.*, 973 F.2d 474, 484

(6th Cir. 1992); *cert. denied,* 506 U.S. 1079, 113 S.Ct. 1046, 122 L.Ed.2d 355.

State courts are bound to apply federal rules in determining the preclusive effect of federal court decisions on issues of federal law; *Heck v. Humphrey,* 512 U.S. 477, 129 L.Ed.2d 383, 114 S.Ct. 2364, 2373 (footnote 9) (1984). The Tennessee Supreme Court properly construed the preclusive effects of the bankruptcy court's order of confirmation, at the outset, but thereafter failed to apply applicable federal rules and case law controlling the more complete preclusive effects of Mitchell's entire Chapter 11 proceedings.

THE TENNESSEE SUPREME COURT'S DIRECTION OF MODIFICATION OF THE CONFIRMED CHAPTER 11 PLAN OF BILLY GWIN MITCHELL AND THE BANKRUPTCY COURT'S ORDER OF CONFIRMATION OF THAT PLAN.

The Tennessee Supreme Court directed and held that the trial court could consider and decide on the validity of Mitchell's alleged "goods and services payments" on the mortgage debt. The Tennessee Supreme Court had no jurisdiction to direct the trial court to even consider that to be a question on remand. The Order of Confirmation (App. D) directs Mitchell pay Prudence Reynolds as proposed in the Amended Plan of Reorganization, i.e., "the remaining sums due in accordance with the terms of her Promissory Note and Deed of Trust", not in goods and services. Under federal bankruptcy law the Debtor is required to make payments as provided in the Plan; *Matter of Lumpkin Sand & Gravel, Inc.,* 104 B.R. 529 (Ga. 1989). Mitchell is prohibited from submitting evidence

that would attempt to show "payment" in the form of "goods and services" in lieu of cash payments; *Specht v. Howard,* (16 Wall) U.S. 564, 21 L.Ed. 348 (1873). The Deed of Trust (App. G) requires the payment of money in dollars and cents, not in goods and services. "Sum" is defined as a quantity of money or currency, not some other form of property; *U.S. v. Van Auken,* 96 U.S. 366, 24 L.Ed. 852 (1878); *McMullen v. U.S.,* 96 F.2d 574 (D.C.Cir. 1938).

Even a federal district court may not adopt any modification that materially alters a reorganization plan and adversely affects claimant's treatment; *In Re Best Products Co., Inc.,* 177 B.R. 791 (S.D.N.Y. 1995), affirmed, 68 F.3d 26 (2d Cir. 1995). The Tennessee Supreme Court's Opinion on these issues is "tantamount to confirmation of a plan different than the one that was proposed by the Debtor and approved;" *In Re Hudson & Manhattan R.R. Co.,* 332 F.Supp. 718 (S.D.N.Y. 1971).

The Deed of Trust likewise provides that Mitchell "will pay such expenses and fees as may be necessary in the protection of the property and the maintenance and execution of this trust, including but not limited to expenses incurred by the Trustee in any legal proceeding to which it is made or becomes a party. . . . (and that Mitchell) will pay all costs of collection and litigation, together with a reasonable attorney's fee, and the same shall be a lien on the premises herein conveyed and enforced by the sale of the property as herein provided." The Tennessee Supreme Court was also in error in assessing costs contrary to the Deed of Trust, Plan of Reorganization and Order of Confirmation of the Bankruptcy court that directed Mitchell to pay these costs of litigation.

The confirmation of Mitchell's Amended Plan of Reorganization was made under the provisions of Title 11, U.S.C., Section 1141 (a). Where the judgment or decree of the federal court determines a right under a federal statute, that decision is final until reversed in an appellate court, or modified or set aside in the court of its rendition; *Stoll v. Gottlieb*, 305 U.S. 165, 170, 59 S.Ct. 134, 137. Any other conclusion strikes down the very foundation of the doctrine of res judicata, and permits the state court to deprive a party of the benefit of its most important principle, and a virtual abandonment of the final power of the Federal courts to protect all who come before them relying upon rights. . . . established by the judgments of the Federal courts; *Deposit Bank v. Frankfort*, 191 U.S. 499, 520, 24 S.Ct. 154, 162 (1903).

CONCLUSION

The Petitioners earnestly submit that their petition for a writ of certiorari should be granted. That the Court should decree and recognize that the Court of Appeals of Tennessee Western Section at Jackson reached the correct result in this case, and that the Supreme Court of Tennessee's restrictive Opinion as to the total preclusive effects of Mitchell's Chapter 11 proceedings in the later portions of that Court's Opinion was erroneous.

Respectfully submitted,

SAM F. COLE, JR.
Counsel of Record
100 N. Main Bldg., Suite 2519
Memphis, TN 38103
(901) 525-7648
Attorney for Petitioners

APPENDIX

A OPINION OF THE SUPREME COURT OF TENNESSEE ..... A. 1

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APPENDIX A

Juanita MITCHELL, Personal Representative of the Estate of Billy Gwinn Mitchell, Plaintiff-Appellant,

v.

Sam F. COLE, Jr., Substitute Trustee, Estate of Prudence Reynolds, and Gerald W. Pickens, Administrator, Defendants-Appellees.

Supreme Court of Tennessee, at Jackson.

April 6, 1998.

Rehearing Denied June 1, 1998.

James Stephen King, Arthur E. Quinn, The Bogatin Law Firm, PLC, Memphis, for Plaintiff-Appellant.

Sam F. Cole, Jr., Memphis, for Defendants-Appellees.

OPINION

LYLE REID, Special Justice.

This case presents for review the decision of the Court of Appeals that a debtor cannot collaterally attack in state court an adjudication made in a Chapter 11 bankruptcy proceeding regarding the balance due on a debt owed by the debtor-bankrupt. The judgment of the Court of Appeals is affirmed as modified.

I

In 1973 Prudence Reynolds, now deceased, sold a farm to the appellant, Billy Gwin Mitchell. Incident to the sale, Mitchell executed a promissory note in the principal

amount of $134,140.71 payable to Reynolds in 240 equal monthly installments of $1,040.00, principal and interest. The promissory note was secured by a deed of trust on the farm.

On April 6, 1983, Mitchell filed a voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code. Apparently, Mitchell made some payments on the note prior to his filing the bankruptcy petition. On June 13, 1984, the bankruptcy court entered an order confirming Mitchell's reorganization plan as amended. The amended plan allowed Reynolds a secured claim in the principal amount of $102,902.28. With respect to the terms of the payment of the debt, the amended plan provided:

> The secured claim of Mrs. J.P. Reynolds ("Reynolds") shall be fully settled, satisfied, and discharged by paying Reynolds the remaining sums due in accordance with the terms of her Promissory Note and Deed of Trust; except that, the terms of said Note shall be extended by a period equal to the number of months that said Note is in arrears. The first installment shall be due and payable upon confirmation with a similar payment being due and payable each month thereafter until said Note shall have been paid in full. Reynolds shall retain her lien upon the Debtor's 144 acre farm.

The record shows that subsequent to confirmation of the amended plan, Mitchell paid to Reynolds in cash $27,353.25.

On January 25, 1988, Mitchell filed an interim report in the bankruptcy case. In the section entitled "Total

Amount of Claims Allowed," the report reflects the principal amount of Reynolds' claim remained at $102,902.28. Reynolds died on June 10, 1988. After her death, Mitchell made no further payments on the note. The final report, filed November 10, 1988, is virtually identical to the interim report and sets forth the same amount for Reynolds' claim. On January 13, 1989, the bankruptcy court entered a final decree closing Mitchell's case.

After Mitchell and Gerald W. Pickens, executor of Reynolds' estate, were not able to agree on the amount owed, defendant Sam F. Cole, Jr., substitute trustee under the deed of trust, gave Mitchell written notice that the entire balance on the note was due and payable and made demand for $113,832.70, principal and accrued interest, plus $17,074.80 for attorney's fees.

On August 29, 1989, Mitchell filed a complaint for a temporary restraining order and for temporary and permanent injunctions to stop the foreclosure. Mitchell contended that he had an oral agreement with Reynolds as to payment of the note through goods and services to her. According to Mitchell, the value of these goods and services, as well as cash payments made to Reynolds, reduced the balance due to $66,330.18. In the counter-complaint, the defendants alleged that Mitchell owed the principal sum of $102,092.28, as reflected in the final report of his Chapter 11 bankruptcy case, plus interest and attorney fees. In answer to the counter-complaint, Mitchell asserted that the amount stated in his bankruptcy proceeding was erroneous.

Prior to trial, the trial court granted the defendants' motion in limine prohibiting Mitchell from presenting

evidence concerning oral statements made by Reynolds prior to her death in regard to the note.[1] At trial, Mitchell testified that he had a very close relationship with Reynolds, his aunt, and that he bought the farm to provide her with a continuous stream of income for the rest of her life. Over repeated objections by the defendants' counsel, Mitchell and other witnesses were allowed to testify that various goods and services were provided to Reynolds by a partnership which was owned by Mitchell and his sisters. Included in the claimed services was $40,000.00 for providing lodging and wages for the decedent's "grounds keeper" over a period of some eight years. The jury found that Mitchell owed $41,101.64 on the note and $21,900.00 in attorney's fees.

The defendants appealed, alleging that the trial court erred in instructing the jury to consider "payments" made by the partnership to Reynolds on Mitchell's behalf and in allowing testimony regarding alleged payments on the note. The Court of Appeals reversed, holding that the evidence of the payments was inadmissible because the bankruptcy proceeding established the outstanding balance on the note as of the date of the final decree. The case was remanded to the trial court for a hearing to determine the amount of payments made by Mitchell from the date of the final decree until the date of trial, plus all accrued interest.

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[1] Not only did Mitchell assert that the amount owed was almost half as much as what the defendants claimed, he also alleged that Reynolds promised to forgive the debt upon her death.

II

Appellant Mitchell's position is not entirely clear. In the Court of Appeals, he contended that the bankruptcy court had erred in determining the principal balance owed to be $102,902.28. He attributed the "mistake" to a misunderstanding with his attorneys in the bankruptcy proceedings. On this appeal, Mitchell takes the position that the amount set forth in the amended plan, which was confirmed by the bankruptcy court on June 13, 1984, established the balance due the decedent's estate on that date. He further contends that the claimed credits for payments and services should be applied to the $102,902.28 debt, leaving a balance of $41,101.64. He asserts that the reports filed by him subsequent to the order confirming the plan do not have the same legal effect as the confirmed plan and that those reports are not *res judicata*.

Section 1141 of the Bankruptcy Code sets forth the consequences of the confirmation of a Chapter 11 plan. Pursuant to 11 U.S.C. § 1141(a), "the provisions of a confirmed plan bind the debtor . . . and any creditor . . . [of] the debtor." Unlike Chapter 13, which delays discharge until the debtor has met his obligations under the plan, 11 U.S.C. § 1328, confirmation of a Chapter 11 plan operates as a discharge. 11 U.S.C. § 1141(d).

The federal courts have consistently upheld the binding effect of the provisions of a Chapter 11 plan. In *In re Dooley*, 116 B.R. 573, 580 (Bankr.S.D.Ohio 1990), the court held that the Chapter 11 debtor was precluded, under the judicial concepts of claim and issue preclusion and the specific provisions of Section 1141 of the Bankruptcy

Code, from relitigating the amount or application of his preconfirmation payments to a creditor. In *In re Chattanooga Wholesale Antiques, Inc.*, 930 F.2d 458, 463 (6th Cir.1991), the court stated:

> Confirmation of a plan of reorganization by the bankruptcy court has the effect of a judgment by the district court and res judicata principles bar relitigation of any issues raised or that could have been raised in the confirmation proceedings.

Thus, in the present case, Mitchell is bound by the provisions of his confirmed Chapter 11 plan establishing $102,902.28 as the outstanding principal balance on the note as of June 13, 1984, the date of the order of confirmation. Preconfirmation payments in goods and services are irrelevant because the court must accept $102,902.28 as the outstanding balance as of the date of the confirmation order. The trial court erred in allowing Mitchell to present evidence about alleged payments in goods and services made prior to confirmation.

In rectifying this error, the Court of Appeals improperly limited the proof to the amount of payments made after the final decree. The Court of Appeals failed to distinguish between payments made by Mitchell prior to the date of the confirmation order and those made subsequent to the date of that order. That court erroneously relied on the final report to determine the amount owed at the conclusion of the bankruptcy proceeding. The final report does not purport to state the amount of the debt as of the date of the filing of the report, nor does it show payments made to secured creditors after confirmation of the Chapter 11 plan in 1984. The report merely restates

the amount of secured claims allowed under the confirmed plan. The report cannot be *res judicata* because it is not an order of the court. The final decree also is not *res judicata;* the order of confirmation is the controlling order. The final decree merely closes the case after the estate has been fully administered. *See* Fed. R. Bankr.3022. In *In re Greater Jacksonville Transportation Co.,* 169 B.R. 221, 224 (Bankr.M.D.Fla.1994), the court stated:

> Even a cursory reading of this last Rule [Fed. R. Bankr.3022] leaves no doubt that the entry of a final decree is merely a perfunctory, administrative event and nothing more than a ministerial housekeeping act which was never designed to determine with finality the substantive rights of parties of interest involved in a Chapter 11 case. This should be evident from the fact that the final decree is entered without notice and hearing to anyone and could be entered even on the Court's own motion.

On remand, the court should determine the amount of credits due since the date of the order confirming the amended reorganization plan. Whether Mitchell is entitled to credits on the debt for goods and services rendered subsequent to the date of the order of confirmation is a question to be determined in the trial court.

III

This decision is limited to the holding that only the determinations made in the confirmed amended plan of reorganization, not the subsequent reports by the debtor in possession, are *res judicata.* With regard to the reports made by Mitchell as debtor in possession subsequent to

the confirmation of the amended plan, the only issue resolved by this Court is that those reports are not *res judicata*. The case obviously presents myriad issues of law and evidence to be resolved on remand.

The judgment of the Court of Appeals is affirmed as modified, and the case is remanded to the trial court for further proceedings.

Costs are taxed one-half to the appellant and one-half to the defendant estate.

ANDERSON, C.J., and DROWOTA and HOLDER, JJ., concur.

BIRCH, J., not participating.

APPENDIX B

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

JUANITA MITCHELL, PERSONAL REPRESENTATIVE OF THE ESTATE OF BILLY GWINN MITCHELL,	(	Shelby Chancery
Plaintiff-Appellant,	(	Hon. Russell Fowler, Special Chancellor
v.	(	
SAM F. COLE, JR., SUBSTITUTE TRUSTEE, ESTATE OF PRUDENCE REYNOLDS, AND GERALD W. PICKENS, ADMINISTRATOR,	(	No. 02S01-9703-CH-00020
Defendants-Appellees.	(	

ORDER

(Filed Jun. 01, 1998)

The Court has reviewed the petition for rehearing filed by the defendants-appellees and the petition for rehearing filed by the plaintiff. It is the decision of the Court that the petitions are without merit. Accordingly, the petitions for rehearing are denied.

Enter this 1st day of June, 1998.

PER CURIAM

APPENDIX C

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

BILLY GWIN MITCHELL,

Plaintiff/Counter-Defendant/Appellee,

v.

SAM F. COLE, JR., Substitute Trustee, ESTATE OF PRUDENCE REYNOLDS, and GERALD W. PICKENS, Administrator CTA,

Defendants/Counter-Plaintiffs/Appellants.

Shelby Chancery No. 97623-2 R.D. C.A. No. 02A01-9503-CH-00060

Hon. Russell Fowler, Special Chancellor

JAMES STEPHEN KING and ARTHUR E. QUINN, Bogatin, Lawson & Chiapella, Memphis, Attorneys for Plaintiff/Counter-Defendant/Appellee.

SAM F. COLE, JR., Memphis, Attorney for Defendants/Counter-Plaintiffs/Appellants.

REVERSED AND REMANDED

Opinion filed:

(Filed Aug. 08, 1996)

TOMLIN, Sr. J.

The original plaintiff in this case, Billy Gwin Mitchell ("plaintiff" or "Mitchell") filed suit in the Chancery Court of Shelby County seeking to enjoin the foreclosure of a deed of trust. Named as defendants were Sam F. Cole, Jr., Substitute Trustee of the Estate of Prudence Reynolds,

and Gerald W. Pickens, Administrator CTA ("defendants" or by name). Defendants filed an answer and a counter-complaint in which they contended, among other things, that the records of Mitchell's Chapter 11 bankruptcy case reflected Mitchell's confirmed amended plan of reorganization mandated that Mitchell pay the mortgage indebtedness to Ms. Reynolds in accordance with the terms of the promissory note. As counter-plaintiffs, Cole and Pickens sought a money judgment for the principal balance due and owing on the note, plus accrued interest and attorney's fees and costs. At the conclusion of all the proof, the case was submitted to a jury, and after issues of fact had been resolved, the special chancellor entered a judgment in favor of the Reynolds estate in the amount of $41,101.64 on the promissory note and attorney's fees in the amount of $21,900.00.

Defendants filed a motion for a new trial alleging five errors. The special chancellor denied the motion for a new trial and entered a final decree. This appeal followed.

Defendants have submitted six issues to this court for our consideration. Counter-plaintiffs contend that the special chancellor erred: (1) in charging the jury that a payment by a third party to a creditor on behalf of the debtor was a payment toward the debt; (2) in allowing witness Don Kelly to testify as an expert witness when his qualifications as such were never established at trial; (3) in allowing plaintiff to introduce an automobile insurance policy of a family partnership to be considered as evidence of payment or credit towards the mortgage indebtedness; (4) in allowing witness Mary Mitchell to testify as to alleged payments and other credits on the

mortgage debt made by nonparties; (5) in allowing plaintiff to testify in violation of the court's order in limine; (6) in failing to grant defendants a new trial. We are of the opinion that the special chancellor did err, and that a new trial is mandated by this record.

In 1973, following the death of her brother, Ham Mitchell, a prominent land owner in Millington, Prudence Reynolds ("decedent") sold her 142 acre farm to plaintiff, her nephew. In conjunction with the sale, plaintiff executed a promissory note in the principal amount of $134,140.71, payable to decedent. The note was secured by a first deed of trust on the property. The note called for payment to decedent in monthly installments of $1,040.00 for a period of 20 (twenty) years, along with interest at the rate of seven (7%) percent per year. The deed of trust was duly recorded in the Register's Office in Shelby County.

Following the death of his father, plaintiff and his two sisters, all beneficiaries of their father's estate, formed a partnership entitled "BAM Partnership." Subsequently, due to the partners' difficulty in paying inheritance taxes on their father's estate, both plaintiff and the partnership filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Tennessee in Memphis.

Plaintiff filed an amended plan of reorganization in his Chapter 11 case in 1984. With respect to the payment of the debt to decedent, the amended plan made the following provision:

> The secured claim of Mrs. J.P. Reynolds ("Reynolds") shall be fully settled, satisfied, and

> discharged by paying to Reynolds the remaining sums due *in accordance with the terms of her Promissory Note and Deed of Trust*; except that, the terms of said Note shall be extended by a period equal to the number of months that said Note is in arrears. The first installment shall be due and payable upon confirmation with a similar payment being due and payable each month thereafter until said Note shall have been paid in full. Reynolds shall retain her lien upon the Debtor's 144 acre farm. (emphasis added)

Shortly thereafter, the bankruptcy court entered an order confirming plaintiff's amended plan of reorganization. During the period from April 1985 to March 1988, plaintiff wrote 16 checks totaling $26,548.57 to decedent in payment of this note. In addition, plaintiff sold 8.97 acres of the farm during this time, from which he paid decedent $804.68 of the proceeds.

In January 1988 plaintiff filed an interim report in his Chapter 11 case. In the section entitled "Total Amount of Claims Allowed," plaintiffs report reflected that the principal amount of the debt owed to decedent at that time was $102,902.28. This amount was listed as payment number 92 of a total of 240 on the mortgage loan amortization schedule. In his final report filed in November 1988, plaintiff set forth the same amount as the amount of the debt at that time. In January 1989, the bankruptcy court entered a final order closing plaintiff's Chapter 11 case.

Prudence Reynolds died in June 1988. Although named executor on her will, plaintiff declined to serve. Gerald W. Pickens was appointed executor. Some time later, plaintiff and Pickens met to discuss plaintiffs' obligations under the note. After the parties were unable to

agree upon the amount owed, Cole, as substitute trustee under the deed of trust, wrote plaintiff advising him that the entire balance of the principal and interest on the note was then due and payable. As of that time, the calculated principal and accrued interest on the note was $113,832.70, plus attorney's fees in the amount of $17,074.80. Plaintiff was advised that if the above amount was not paid by August 1, 1989, Cole would begin foreclosure.

On August 24, 1989, plaintiff filed a petition for a temporary restraining order and for a temporary and permanent injunction seeking to prohibit defendants from proceeding with the foreclosure. Plaintiff contended that as a result of an oral agreement he had made with decedent, the value of goods and services rendered to decedent by the BAM partnership, as well as cash payments made by the partnership to the decedent, were to be credited against the note. In that regard, plaintiff alleged that decedent had credited him with over 160 payments on the note prior to her death, which reduced the balance due to $66,330.18, and that he was entitled to have the correct balance of the note ascertained before a foreclosure sale could proceed. Shortly thereafter, a consent order on the temporary injunction was entered, enjoining defendants from foreclosing. Defendants then filed an answer as well as a counter-complaint.

In the counter-complaint, defendants alleged that plaintiff owed a balance on the note of $102,092.28, the stated principal loan balance that appeared in plaintiff's bankruptcy proceeding in both his interim report and the final report. In plaintiff's answer to the counter-complaint, he alleged that the amount of the balance due on

the note was not as stated above, but that the amount due as alleged by defendants in their counter-complaint was included in error in his bankruptcy proceedings.

Prior to trial, the trial court granted defendants' motion in limine prohibiting plaintiff from presenting any evidence at trial concerning any oral statements made by decedent prior to her death in regard to the note and deed of trust.[1] In addition, prior to trial the chancellor ordered that of the proposed factual issues presented by each party to be ultimately submitted to the jury, the chancellor ordered that plaintiff's issue of fact number 8 and defendants' issues of fact numbers 5, 7 and 8 be submitted at trial to the jury.

At trial, plaintiff testified that he and the decedent, his aunt, had a very close relationship and that her motivation in selling him the farm was to provide her with a continuous stream of income for the rest of her life. Although the court's order in limine prohibited plaintiff from testifying as to any oral statements made by his aunt concerning the note and trust deed prior to

---

[1] This case was upon the docket of four different chancellors by the time it came up for trial. It was originally assigned to the Honorable George T. Lewis, Chancellor of Part II, who recused himself because of his acquaintance with plaintiff. Chancellor Joe C. Morris, of Jackson, was thereafter designated as Special Chancellor. After the Honorable Floyd Peete was duly elected Chancellor of Part II, the case was transferred to him as the presiding chancellor. While obviously handled properly, at some point prior to trial, Chancellor Peete recused himself and Special Chancellor Russell Fowler was designated to try the case. When, how, and by whom Special Chancellor Fowler was designated is unknown as there is no order in the record.

her death, over the repeated objections of defendants' counsel, plaintiff was allowed to testify concerning the various goods and services that the BAM partnership provided the decedent during her lifetime. Again over the same objections, plaintiff was permitted to testify that his bookkeeper kept records not only of cash payments made to decedent, but also would make notations on the amortization schedule of the note of the cash value of the goods and services provided to decedent from time to time through the BAM Partnership.

Following the overruled objections by defendants' counsel, plaintiff was permitted to testify that he provided wages and lodging for the grounds keeper of decedent at a cost of $250.00 per week for some eight years, totaling almost $40,000.00. Plaintiff also testified that through BAM he provided decedent with automobiles over the years as well as providing her with insurance through BAM's fleet insurance policy.

Again, over objections of counsel for defendants, certain BAM employees were permitted to testify in a manner supportive of plaintiff's earlier testimony. Donald Kelly, a carpenter and maintenance man employed by BAM, testified that beginning in the 1960's, he made weekly visits to plaintiff's home to make both minor and major repairs, ranging from installing light bulbs to repairing the roof. He was also permitted by the chancellor, over the objections of defendants' counsel, to testify as an expert and give an opinion as to the value of the goods and services he supplied in this endeavor, without a full examination of his qualifications to testify as an expert witness.

Iwona Long, plaintiff's former personal secretary, and Mary Mitchell, who served as bookkeeper for plaintiff, the BAM partnership, Ham Mitchell, and the Ham Mitchell estate, both testified as to various amounts of cash payments and goods and services supplied to decedent and the notations they made of same on the loan amortization schedule. Mary Mitchell testified that at the end of each year, at plaintiff's request, she would give him a list of all the goods and services he had provided Mrs. Reynolds that year.

Defendant Pickens was the sole witness who testified on behalf of defendants. He stated that at the time of trial, based upon the amount of indebtedness listed by plaintiff in his final report in bankruptcy, plaintiff owed $102,790.23 as the balance of the principal due on the note, with accrued simple interest totaling $44,887.54, for a total of $147,677.77.

At the conclusion of all the proof, the chancellor instructed the jury as to the law that they should consider and other aspects of their deliberations. Included therein were three special instructions, the first two of which were submitted at the request of the defendants and agreed to by plaintiff, and the third was a special request made by plaintiff, modified in part and accepted by the chancellor. They were as follows:

> Ladies and gentlemen of the jury, I further instruct you that the term 'res judicata' . . . is defined in the law as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.

> Ladies and gentlemen of the jury, I further instruct that the confirmation of a plan of reorganization by a United States Bankruptcy Court has the effect of a judgment of a United States District Court, and res judicata principles bar relitigation of any issues raised or that could have been raised in the confirmation proceedings.
>
> Ladies and gentlemen of the jury, a payment by a third party to a creditor on behalf of the debtor is payment towards the debt.

I. The Jury Charge

While our Latin studies teach us that "all Gaul is divided into three parts," the special jury instructions given by the chancellor above at the request of the parties should be divided into two parts. The two special jury instructions given by the special chancellor at the behest of the defendants in essence told the jury that the confirmation of a plan of reorganization in a U.S. Bankruptcy Court had the same effect as a judgment of a U.S. District Court, and that res judicata would bar relitigation of any issues that were presented or could have been presented in the bankruptcy confirmation proceedings. The court explained to the jury what "res judicata" means – i.e., a thing or matter settled by judgment. As we have indicated earlier, these two instructions were approved by counsel for both parties.

Thereafter, in virtually the same breath, the chancellor told the jury that "a payment by a third party to a creditor on behalf of the debtor is payment towards the debt." In simple language, this instruction said to the jury

that any payment by the BAM partnership to the decedent on behalf of plaintiff Mitchell constituted a payment towards Mitchell's debt to decedent. It is this instruction about which defendants strongly complain and which was given over their objections.

The effect of the confirmation of a plan of reorganization in a Chapter 11 Bankruptcy case is stated in 11 U.S.C.A. § 1141 (1993), which reads in pertinent part as follows:

> (a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor . . . and any creditor . . . [of] the debtor, whether or not the claim or interest of such creditor . . . is impaired under the plan and whether or not such creditor . . . has accepted the plan.

The federal courts have consistently upheld the finality of a confirmation of a bankruptcy. *E.g., In re Chattanooga Wholesale Antiques, Inc.*, 930 F.2d 458, 463 (6th Cir. 1991). The Sixth Circuit stated as follows:

> Section 1141 is entitled "Effect of confirmation." Section 1141(a) lists categories of parties who are bound by the terms of confirmed plan. The effect of confirmation under the plan language of § 1141(a) is to bind all parties to the terms of a plan of reorganization.
>
> . . . Confirmation of a plan of reorganization by the bankruptcy court has the effect of a judgment by the district court and res judicata principles bar relitigation of any issues raised or that could have been raised in the confirmation proceedings.

Id. (citations omitted).

Plaintiffs interim and final reports in bankruptcy stated, under oath, in part that the principal amount of the indebtedness to Prudence Reynolds was $102,902.28. Plaintiff's amended plan of reorganization further stated that this debt to decedent was to be "fully settled, satisfied and discharged in accordance with her Promissory Note and Deed of Trust." Plaintiff's amended plan of reorganization was confirmed on June 13, 1984, by the Honorable William B. Leffler, Chief U.S. Bankruptcy Judge. Any credits that plaintiff contended that he was entitled to up to the filing of his amended plan of reorganization should have been and could have been presented to the bankruptcy court for consideration. It is apparent from the lack of any evidence in this case of plaintiff contesting the amount owed that he completely and totally failed to do so.

Plaintiff contended in the trial court and contends in this court in his brief and oral argument that the balance of the loan as stated in his interim report and final report in his Chapter 11 case was a "mistake," arising from a misunderstanding with his attorneys in the bankruptcy case. As a result of this "mistake," plaintiff contends that he is not bound under the statutory and case law that we have cited herein to this amount. This contention is without merit. An argument by the debtor quite similar to this argument of plaintiff was rejected in *In re Dooley,* 116 B.R. 573, 578 (Bankr. S.D. Ohio 1990). In *Dooley,* the debtor challenged the amount allowed of a secured creditor's claim on the ground that the creditor did not properly give credit to the debtor's obligation to him on various preconfirmation payments. The court therein noted that debtor had the opportunity to challenge the amount of

the allowed at two different confirmation hearings, and that the debtor submitted his amended plan of reorganization over the creditor's objection. In rejecting this contention, the bankruptcy judge stated in part:

> The lengthy and often vigorously contested process leading to the confirmation of a debtor's proposed Chapter 11 Plan would become meaningless if the order confirming a debtor's plan was not accorded preclusive effect. For that reason, among others, a specific provision was enacted in Chapter 11 to statutorily strengthen the preclusive effect granted to a Chapter 11 confirmation order.
>
> . . . It is impossible to ignore the inclusion of the words "The provisions of a confirmed plan bind the *debtor*" in applying this section. One Bankruptcy Court noted, "It is the opinion of this court that § 1141 of the Bankruptcy Code means what it says and not only are the creditors bound by the confirmed plan, but the debtors are also so bound." (citations omitted)

Id. at 578-79.

To give even more finality to this conclusion, we cite *Miller v. Meinhard-Commercial Corp.*, 462 F.2d 358, 360 (5th Cir. 1972), wherein that court stated in part:

> An arrangement confirmed by a bankruptcy court has the effect of a judgment rendered by a district court, and any attempt be [sic] the parties or those in privity with them to relitigate any of the matters that were raised or could have been raised therein is barred under the doctrine *res judicata*.

> . . . The suit is no more than a collateral attack upon the referee, order confirming the plan of arrangement; the integrity of the judgment is challenged. Even though an action has an independent purpose and contemplates some other relief, it is a collateral attack if it must in some fashion overrule a previous judgment.
>
> . . . *Res judicata* applies where the subject matter is the same, "not only to every matter which was offered and received to sustain or defeat the claim or demand, but also as to any other admissible matter which might have been offered for that purpose."

Id. at 360 (citations omitted).

We therefore conclude that the special chancellor erred when he gave plaintiff's special request as modified, thereby permitting the jury to consider plaintiff's credits against the note held by the decedent that were clearly precluded by the bankruptcy proceedings.

It now becomes necessary to decide whether this erroneous charge, more probably then [sic] not, affected the judgment of the jury. T.R.A.P. 36(b) provides that "A final judgment . . . shall not be set aside unless, considering the whole record, error more probably than not affected the judgment." In reviewing the erroneous charge, it is appropriate to consider the charge as a whole in determining whether a prejudicial error has been committed. The specific instruction at issue must be considered in light of its context. *Gorman v. Earhart*, 876 S.W.2d 832, 836 (Tenn. 1994).

Viewing the record as a whole, the erroneous charge that the jury could consider payments made by a third

party, BAM, to the creditor, decedent, on behalf of the debtor, plaintiff Mitchell, in satisfaction of the debt, more probably than not affected the verdict. One of the decisive issues before the jury was the amount that Mitchell owed his aunt at the time the suit was brought. A substantial portion of plaintiff's proof focused on the various and sundry types of credits that were reportedly given, or should have been given, against his note to decedent in the form of services rendered the decedent by the BAM partnership and persons employed by the partnership, as well as other goods allegedly provided decedent by plaintiff as a member of the BAM partnership. All of this testimony was objected to and was subject to the defense of res judicata as a result of the plaintiff's confirmed amended plan of reorganization.

It is apparent to this court, from the record, that the jury took into account the plaintiff's testimony concerning the value of goods and services provided to the decedent by the BAM partnership. While the bankruptcy proceedings established that the principal amount plaintiff owed the note as of November 1988 was $102,902.28, the jury determined that the balance due on the note to decedent was only $41,101.64. Taking all this into account, the trial court's charge more likely than not influenced the jury in determining the balance due on the note in question. The judgment of the trial court therefore must be reversed.

As for the remaining evidentiary issues of defendants, we find that each and every one of them constituted error on behalf of the trial court. In light of the legal effect of res judicata of the bankruptcy court's orders and judgments, the evidence plaintiff sought to introduce

concerning the value of goods and services provided by the BAM partnership was irrelevant, immaterial, and inadmissible. T.R.E. 402.

Upon remand, the scope of the hearing should be limited to the task of ascertaining the amount actually due and owing by plaintiff on the secured promissory note, plus accrued interest and attorney's fees. Taking as a beginning point the outstanding balance on the promissory note as stated in the bankruptcy court's final order of November 1988, the trial court should ascertain the amount of payments, if any, made by plaintiff from the time of the final order of bankruptcy until the date of trial, plus all accrued interest to date.

Accordingly, the decree of the trial court is reversed and this cause is remanded to the Chancery Court of Shelby County for further proceedings not inconsistent with this opinion. Costs in this cause on appeal are taxed to plaintiff, for which execution may issue if necessary.

/s/ Tomlin
TOMLIN, Sr. J.

/s/ Holly J. Lillard
LILLARD, J. (CONCURS)

HIGHERS, J., Not participating

APPENDIX D

United States Bankruptcy Court

WESTERN **District of** TENNESSEE

In re

BILLY GWINN MITCHELL, M.D.

Bankruptcy Case No. 93-21183-B (rs)

Debtor

EXEMPLIFICATION CERTIFICATE

I, Jed G. Weintraub, clerk of the bankruptcy court for this district and keeper of the records and seal of the court certify that the documents attached are true copies of Order Confirming Plan as Amended

now remaining among the records of the court. In testimony of this statement, I sign my name, and affix the seal of this court at Memphis, in the State of Tennessee, this 13th of Day, July, 1992

[SEAL]
[Seal of Court]

/s/ Jed G. Weintraub
Clerk of the Bankruptcy Court

I, William H. Brown, bankruptcy judge for this district certify that Jed G. Weintraub is and was at the date of the above certificate clerk of the bankruptcy court for this district, duly appointed and sworn, and keeper of the records and seal of the court, and that the above certificate of the clerk and the clerk's attestation is in due form of law.

7-13-92
Date

/s/ William H. Brown
Bankruptcy Judge

I, Jed G. Weintraub, clerk of the bankruptcy court for this district and keeper seal of the court certify that the Honorable William H. Brown is and was on the date of the above certificate a judge of this court, duly appointed and sworn; and that I am well acquainted with this handwriting and official signature and know and certify the signature written above to be that of the judge.

In testimony of this statement, I sign my name, and affix the seal of the court at Memphis, in the State of Tennessee, this 13th Day of July, 1992.

[SEAL]
[Seal of Court]

/s/ Jed G. Weintraub
Clerk of the Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE

BILLY GWINN
MITCHELL, M. D.

DEBTOR

CHAPTER 11
CASE NO. 83-21183

ORDER CONFIRMING PLAN AS AMENDED

(Filed Jun. 13, 1984)

This cause came on to be heard to confrim [sic] the Plan of Reorganization as amended and:

It having been determined after hearing on notice:

1. That the provisions of Chapter 11 of the Code have been complied with and the plan has been proposed in good faith and not by any means forbidden by law; and

2. That the provisions of 11 U.S.C. § 1129(a) have been met.

IT IS, THEREFORE ORDERED:

1. That the plan of Reorganization as amended be and is hereby confirmed.

2. That notice of said confirmation be given to all creditors and interested parties.

/s/ William B. Leffler
WILLIAM B. LEFFLER
CHIEF UNITED STATES
BANKRUPTCY JUDGE

Date June 13, 1984

Bogatin, Lawson & Chiapella
Attorneys for Debtor/Applicant

By: /s/ Thad S. Rodda, Jr.
Thad S. Rodda, Jr.
245 Wagner Place, Suite 280
Memphis, TN 38103

/s/ Richard T. Doughtie, III
Richard T. Doughtie, III
Attorney for Debtor/Applicant

APPENDIX E

United States Bankruptcy Court

WESTERN **District of** TENNESSEE

In re

BILLY GWINN MITCHELL, M.D.

Bankruptcy Case No. 83-21183-B (rs)

Debtor

EXEMPLIFICATION CERTIFICATE

I, Jed G. Weintraub, clerk of the bankruptcy court for this district and keeper of the records and seal of the court certify that the documents attached are true copies of Final Decree

now remaining among the records of the court. In testimony of this statement, I sign my name, and affix the seal of this court at Memphis, in the State of Tennessee, this 13th of Day, July, 1992

[SEAL]
[Seal of Court]

/s/ Jed G. Weintraub
Clerk of the Bankruptcy Court

I, William H. Brown, bankruptcy judge for this district certify that Jed G. Weintraub is and was at the date of the above certificate clerk of the bankruptcy court for this district, duly appointed and sworn, and keeper of the records and seal of the court, and that the above certificate of the clerk and the clerk's attestation is in due form of law.

7-13-92
Date

/s/ William H. Brown
Bankruptcy Judge

I, Jed G. Weintraub, clerk of the bankruptcy court for this district and keeper seal of the court certify that the Honorable William H. Brown is and was on the date of the above certificate a judge of this court, duly appointed and sworn; and that I am well acquainted with this handwriting and official signature and know and certify the signature written above to be that of the judge.

In testimony of this statement, I sign my name, and affix the seal of the court at Memphis, in the State of Tennessee, this 13th Day of July, 1992.

[SEAL]
[Seal of Court]

/s/ Jed G. Weintraub
Clerk of the Bankruptcy Court

B33 (Official Form 33)
(1/87)

United States Bankruptcy Court

WESTERN **District of** TENNESSEE

WESTERN DIVISION

In re

BILLY GWINN MITCHELL, M.D.

Debtor*
Social Security No.:
410-24-5236
Employer Tax I.D. No.:
n/a

Bankruptcy Case No.
83-21183-B(cds.)

(CHAPTER 11) (ASSET)

FINAL DECREE

(Filed Jan. 13, 1989)

The estate of the above named debtor has been fully administered.

[XXX] The deposit required by the plan has been distributed.

IT IS ORDERED THAT:

[ ] _____
(name of trustee)

is discharged as trustee of the estate of the above-named debtor and the bond is cancelled;

[XXX] the chapter 11 case of the above named debtor is closed; and

[ ] [other provisions as needed]

JANUARY 13, 1989
Date

/s/ William Houston Brown
(WILLIAM HOUSTON BROWN)
Bankruptcy Judge

**Set forth all names, including trade names, used by the debtor within the last 6 years. (Bankruptcy Rule 1005). For joint debtors set forth both social security numbers.*

APPENDIX F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

IN RE:	*	Chapter 11
BILLY GWINN MITCHELL, M.D.	*	Case No. 83-21183
Debtor.	*	SSN: 410-24-5236

FINAL REPORT OF DEBTOR IN POSSESSION
IN CHAPTER 11 CASE

(Filed Nov. 10, 1988)

(The amounts shown in this Report should include all the amounts shown on previous Follow-Up Reports and any additional amounts paid at the time of the filing of this FINAL REPORT)

ADMINISTRATIVE EXPENSES PAID: (Do NOT include operating expenses)

	AMOUNTS
1. Accountant's Fees:	NONE
2. Auctioneer's Fees:	NONE
3. Appraiser's Fees:	NONE
4. Attorney Fees for Creditor's Committee:	NONE
5. Attorney Fees for Trustee:	NONE
6. Attorney Fees for Debtor (includes reimbursed costs)	
Bogatin, Lawson & Chiapella	$ 19,765.14
Richard T. Doughtie, III	$ 1,781.08

7. Other Attorney Fees:	NONE
8. Taxes, Fines, Penalties, etc. A. Shelby County, Tennessee – for delinquent real property tax obligations	$ 18,773.50
B. Internal Revenue Service – Withholding Taxes – paid for obligations of BAM Partnership	$ 65,000.00 (Appx.)
9. Other Expenses of Administration (non-operating) (Itemize)	–
Court Cost – United States Bankruptcy Court	$ 262.00
TOTAL OF *ALL* ADMINISTRATIVE EXPENSES PAID TO DATE IN THIS CHAPTER 11 CASE (operating)	$ 105,581.72
PAYMENTS TO CREDITORS: (According to the Plan)	
1. According to the Plan, the total amount *TO BE* paid to *general unsecured* creditors totaled:	$ 16,717.34
2. According to the Plan, the total PERCENTAGE of allowed claims *TO BE* paid to *general unsecured* creditors totaled:	100%
TOTAL AMOUNT OF CLAIMS ALLOWED: (Under the Plan)	
1. Secured Claims (Per Claims Register/Debtor's Schedules): Commercial & Industrial Bank (Paid under Plan of BAM Partnership BK #83-21182)	$ 75,448.00

First Tennessee Production Credit Association (Paid under Plan of BAM Partnership BK #83-21182)	$1,007,910.20
Equitable Life Assurance Society of the United States (Paid under Plan of BAM Partnership BK #83-21182)	$1,480,050.13
Union Planters National Bank (Paid under Plan of BAM Partnership BK #83-21182)	$ 67,924.16
The Peoples State Bank (Paid under Plan of BAM Partnership BK #83-21182)	$1,251,890.46
Mrs. J. P. Reynolds	$ 102,902.28
2. Priority claims (Per Claims Register/Debtor's Schedules): Tennessee Department of Revenue (Beverage Tax) (Paid under Plan of BAM Partnership BK #83-21182)	$ 6,028.12
Tennessee Department of Revenue (Inheritance Tax) (Paid under Plan of BAM Partnership BK #83-21182)	$ 55,000.00
Tennessee Department of Revenue (Sales and Use Tax) (Paid under Plan of BAM Partnership BK #83-21182)	$ 2,869.89
Shelby County, Tennessee (Real and Personal Property Tax)	$ 3,861.16
Internal Revenue Service (Estate Tax) (Paid under Plan of BAM Partnership BK #83-21182)	$1,157,175.51

Internal Revenue Service (Federal Unemployment Tax) (Paid under Plan of BAM Partnership BK #83-21182)	$	788.96
3. Unsecured claims	$	16,717.34

(Please be sure to show an amount on EACH of the lines above. If there is no payment show "none" on the line.)

Describe briefly any transfers proposed by the plan that have taken place and/or to take place in the future. Show value of same: (Estimate if necessary)

1. October 1983, Debtor transferred 341 acres of farmland, known as "Debtor's Austin Peay Farm", to William R. Thompson for the approximate purchase price of $461,000.00, the proceeds of which satisfied the lien of Equitable Life Assurance Company Of The United States on that property, satisfied certain outstanding withholding tax obligations of BAM Partnership and the balance of the proceeds were held by Debtor for the purpose of funding his Plan.

2. April, 1985, Debtor transferred 9 acres of a 141.73 acre parcel to Walter A. and Lanita P. Burrus for a purchase price of $2,200.00 per acre, the proceeds (after payment of cost of closing) were disbursed $11,686.85 to Peoples State Bank and the balance to Mrs. J. P. Reynolds.

3. On March 1, 1988, Debtor sold the real property leased to Dandridge Equipment, Inc. to the lessee for $105,000.00, with part of the sale proceeds applied in payment of delinquent real property taxes on the subject property and certain delinquent employment taxes of BAM Partnership, and the balance of the sale proceeds

were used by Debtor for the purpose of funding current operations.

4. On October 18, 1988, Debtor transferred to First Tennessee Production Credit Association by Deed of Trust, certain real property owned by Debtor as additional consideration for PCA's agreement to modify the terms of repayment of secured obligations owed it by BAM Partnership, such modified terms being set forth in Consent Order entered October 24, 1988 in BAM Partnership's bankruptcy proceedings (#83-21182).

Are there any matters still requiring judicial administration in this case but do not prevent this FINAL REPORT from being filed for statistical purposes? (Describe briefly)

NONE

The information set forth above represents the best information available to the Debtor.

/s/ B. G. Mitchell, M.D.
B. G. Mitchell, M.D.,
Debtor in Possession

DATED: 11/10/88

Subscribed and sworn to before me this 10th day of November, 1988.

/s/ Brenda J. Tinker
Notary Public

My Commission Expires:
9/1/91

APPENDIX G

Return to
Instrument prepared by:
Rosenfield, Borod, Bogstin
& Kremer, P. C.

Mail tax notice to:
Billy Gwinn Mitchell
P. O. Box 98
Millington, Tennessee

DEED OF TRUST

J2 8298

This Indenture made and entered into this 27th day of November, 1973, but as of December 1, 1973 by and between Billy Gwinn Mitchell

Party the first part and J. Richard Rossie Trustee, of the second part,

WITNESSETH: That for and on consideration of Five Dollars cash in hand paid by the party of the second part to the parties of the first part, and the debts and trusts hereafter mentioned, and parties of the first part have bargained and sold and do hereby bargain, sell, convey and confirm unto the said party of the second part the following described real estate situated and being in Shelby County, Tennessee, to-wit:

> In the First Civil District of Shelby County, Tennessee: Lot 2 – 141.73 acres of Chancery Court (#20325 R.D.) Subdivision of the Charles P. Reynolds Estate in Lots land 2 and the "Dower" tract of Probate Court Subdivision of the Robert Reynolds Estate (Plot in Minute Book 19 Page 517) and all being a part of the Samuel Harris 5000 acre Grant No. 17.
>
> Beginning at a point where the center line of Central College Road intersects the center line of Reynolds Avenue or Road thence with center line of Central College Road South 84 degrees 10

minutes east 61.20 chains thence South 6 degrees 10 minutes west 14.91 chains thence east 2.8 chains thence South 6 degrees 10 minutes west 7.48 chains to a point at northeast corner of Lot 3 of said Subdivision thence with north line of lot 3 north 85 degrees west 63.56 chains to point in center line of Reynolds Road, thence north with center line of said road 23.33 chains to point of beginning and containing 141.73 acres; being the same property conveyed to James P. Reynolds and Prudence Reynolds by Warranty Deed recorded in Shelby County, Tennessee, Register's Office in Book 2355, page 214; being the same property conveyed to party of the first part by Warranty Deed recorded in Shelby County, Tennessee Register's Office as Instrument J2 8297

TO HAVE AND TO HOLD, the aforedescribed real estate, together with all the hereditaments and appurtenances thereunto belonging or in any one appertaining unto the land party of the second part, its successors and assigns, in fee simple forever, and the said parties of the first part do hereby consent with the said party of the second part, his heirs and assigns, that they are lawfully seized in fee of the aforedescribed real estate; that they have a good right to sell and convey the same, that the same is unencumbered, except for trust deed recorded in said Register's Office as Instrument F5 0404, building lines, subdivision restrictions, and easements of record.

and that the title and quiet possession thereto they will and their heirs and personal representatives shall warrant and forever defend against the lawful claims of all persons

But this is a Trust Deed, and is made for the following uses and purposes, and none other that is to say the said parties of the first part are justly indebted to Prudence Reynolds or the holder of the notes hereinafter mentioned in the sum of One Hundred Thirty-four Thousand One Hundred Forty and 71/100 ($134,140.71) – Dollars. evidenced by

> promissory note of even date bearing interest at the rate of seven (7%) percent per annum and payable in equal monthly installments for twenty (20) years with right reserved to party of first part to pre-pay indebtedness at any time without penalty.

The property herein conveyed is encumbered by a lien of a deed of trust recorded in said Register's Office as Instrument F5 0404 and it is a condition of this instrument that in the event of any default on any of the terms and conditions of said prior deed of trust, or in the event of any default in any of the terms and conditions of any other deed of trust, the lien of which may be or become prior and paramount to the lien of this instrument, then in every such event, the owner of any part of the indebtedness secured by the instrument may, at his option, decide the indebtedness secured by this instrument due for all purposes, and foreclosure may be had hereunder as in the case of any other default hereunder. The owner of any part of the indebtedness secured hereby may, at his discretion, advance and pay any such sum or sums as shall be necessary in order that the terms and conditions of any Deed of Trust, the lien of which is then prior and paramount to the lien of this instrument, may be complied with, and such amounts as paid shall be secured by

the lien of this instrument and shall be an interest from date of such payment at the rate of 6% per annum and shall be treated as part of the expenses of administering this trust, and the advancement of such sum or sums shall in no way limit or has the aforesaid option to accelerate said indebtedness.

The parties of the first part desire to secure and make certain the payment of said notes, and of any and all renewals and extensions thereof. Now, therefore, the parties of the first part agree and bind themselves that so long as any part of the indebtedness aforesaid shall remain unpaid, they will pay all taxes and assessments against said property promptly when due, and deposit all tax receipts with the holder of the greater portion of the outstanding indebtedness secured hereby, will insure the buildings on said property for not less than against fire in some insurance company or companies approved by the holder of the greater portion of the outstanding indebtedness secured hereby and cause said policies to be made payable to said Trustee, for the benefit of the owner of said indebtedness as his interest may appear, and deposit said policies with the holder of the greater portion of the outstanding indebtedness secured hereby as further security for said debt, no responsibility for the approval or maintenance of insurance being imposed upon the Trustee; will protect the improvements on said property by proper repairs, and maintain them in good repair and condition, will not do anything or suffer or permit anything to be done whereby the lien of the Deed of Trust might or could be impaired, will pay such expense and fees as may be necessary in the protection of the property

and the maintenance and execution of this trust, including, but not being limited to, expenses incurred by the Trustee in any legal proceeding to which it is made or becomes a party. The net proceeds resulting from the taking of all or any part of the property by eminent domain, or from any sale on lien thereof, shall be applied upon the indebtedness in inverse order to its maturity and in the event of the destruction of the improvements by fire or other causalty, the net proceeds of the insurance shall be applied upon the indebtedness secured hereby in inverse order of its maturity, or at the option of the parties of the first part, their heirs and assigns, such proceeds may be used to restore the improvements to their former condition.

The owner of any part of the indebtedness aforesaid may, at his discretion, advance and pay such sums as may be proper to satisfy taxes, maintain insurance and repairs, and protect and preserve the property, and such amounts so paid shall be held and treated as part of the expense of administering this trust.

If the said parties of the first part shall pay said indebtedence when due, and shall pay such sums as shall be necessary to discharge taxes and maintain insurance and repairs and the costs, fees and expenses of making, enforcing and executing this trust, when they shall severally be due and payable, then this conveyance shall become void, and the Trustee shall reconvey by quit claim the property herein described at expense of said parties of the first part.

But if said parties of the first part shall fail to pay any part of said indebtedness, whether principal or interest,

promptly, when the same becomes due, or shall fail to pay any sums necessary to satisfy and discharge taxes and assessments before they become delinquent, or to maintain insurance or repairs, or the necessary expense of protecting the property and executing this trust, then, or in either event, all of the indebtedness herein secured shall, at the option of the owner of any of said notes and without notice, become immediately due and payable, principal and interest, and the said Trustee is hereby authorized and empowered to enter and take possession of said property, and before or after such entry to advertise the sale of said property for twenty-one days by three weekly notices in some newspaper published in Memphis, Tennessee and sell the said property for cash to the highest bidder, free from equity of redemption, homestead, dower, and all other exemptions, all of which are hereby expressly waived, and said Trustee shall execute a conveyance to the purchaser in for fee simple, and deliver possession to the purchaser, which the parties of the first part bind themselves shall be given without obstruction, inhidrance or delay.

The owners of any part of the indebtedness hereby secured may become the purchaser at any sale under this conveyance.

If the notes secured hereby are placed in the hands of an attorney for collection, by suit or otherwise, or to enforce their collection by foreclosure or to protect the security for their payments, the parties of the first part will pay all costs of collection and litigation, together with a reasonable attorney's fee, and the same shall be a lien on the premises herein conveyed and enforced by a sale of the property as herein provided.

The proceeds of any sale shall be applied as follows: first to the payment of the expenses of making, maintaining and executing this trust, the protection of the property, including the expense of any litigation and attorney's fees, and the usual commissions to the Trustee; second, to the payment of the indebtedness herein secured or intended so to be, without preference or priority of any part over any other part, and any balance of said indebtedness remaining unpaid shall be the subject of immediate suit; and, third, should there be any surplus, the Trustee will pay it to the parties of the first part, of order. In the event of the death, refusal, or of inability for any cause, on the part of the Trustee named herein, or of any successor trustee, to act at any time when action under the foregoing powers and trust may be required, or for any other reason satisfactory to the owner of the debt, the owner or owners of the majority of the outstanding indebtedness aforesaid are authorized either in their own name or through an attorney or attorneys in fact appointed for that purpose by written instrument duly registered, to name and appoint a successor or successors to execute this trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named herein and such like power of substitution shall continue so long as any part of the debt secured hereby remains unpaid. The parties of the first part, for themselves, their heirs, representatives and assigns, covenant and agree that at any time after default in payment of any of the indebtedness hereby secured, or upon failure to perform

any of the covenants to be kept and performed by them, said Trustee may enter upon and take possession of said property and collect the rents and profits therefrom with payment of such to the Trustee after default being full acquittance to the tenant, but the Trustee shall be required to account only for the net rents, received by him; and from and after the conveyance of said property under this Deed of Trust, the parties of the first part, and all persons under them, shall, at the option of the purchaser, be and become the tenants at will of the purchaser, at a rental of $_____ per month, commencing with the date of delivery of the Trustee's Deed.

In the event that two trustees are named herein either of the trustees shall be clothed with full power to act when action hereunder is required and the term "Trustee" shall be construed to mean "Trustees."

In the event that two trustees are named herein and the substitution of a trustee shall become necessary for any reason, the substitution of one trustee in the place of the two named herein shall be sufficient.

Wherever the word "Party" is used herein, it shall mean "Parties" if there are more than one person referred to and wherever pronouns occur herein, they shall be construed according to then proper gender and number according to the context of this instrument.

All erasures and interlineations were made before signing.

The necessity of the Trustee herein named, or any successor in trust, making oath or giving bond, is expressly waived.

Witness the signatures of the said parties of the first part this the day and year first above written.

/s/ Billy Gwinn Mitchell
Bill Gwinn Mitchell

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STATE OF TENNESSEE, COUNTY OF SHELBY)

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Billy Gwinn Mitchell to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as free act and deed.

WITNESS my hand and Notarial Seal at office this 27th day of November 1973 My Commission expires 3/22/77

/s/ Irvin Bogatin
Notary Public

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State Tax $132.10

Clerk's fee $ 50

Total $132.60

400

Paid 13660

Deputy County Court Clerk

T. G.#

COMPLIMENTS OF MID-SOUTH TITLE COMPANY, INC.

A. 45

A Title Policy in a Vital Policy

Revised Oct. 1968

(THIS DEED NOT DRAWN IN OFFICE OF MID-SOUTH TITLE COMPANY, INC.)